ATLANTIC RICHFIELD CO.

IBLA 85-614 Decided October 9, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, sustaining in part and overruling in part objections to readjusted lease terms for coal lease D-044569 and vacating in part a notice setting forth such terms.

Reversed.

1. Coal Leases and Permits: Readjustment

Readjustment of a coal lease is not timely where, prior to the end of the second 20-year period of the lease in 1974, BLM gave the lessee notice of BLM's intention to readjust the lease, but thereafter ensued a 5-year delay in furnishing appellant the proposed lease terms and an additional 6-year delay in responding to appellant's objections to the proposed lease terms.

APPEARANCES: Lary D. Milner, Esq., Stephen D. Alfers, Esq., and Charles L. Kaiser, Esq., Denver, Colorado, for appellant; Lyle K. Rising, Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Atlantic Richfield Company (ARCO) appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated April 17, 1985, sustaining in part and overruling in part objections to readjusted lease terms for coal lease D-044569 and vacating in part a notice of readjusted lease terms.

Coal lease D-044569 was entered on August 30, 1934, by and between the United States and appellant's predecessor in interest, Tony Bear. 1/ Section 3 of this lease provided that the lessor had the right "to readjust and fix the royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof, and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of such period." By decision

1/ The lease was assigned to ARCO effective Apr. 1, 1971.

of December 28, 1955, BLM readjusted section 2(i) of the lease 2/ and approved the continuance of the lease for a second 20-year period beginning August 30, 1954.

In a letter dated August 28, 1973, Geological Survey (GS) notified ARCO that a readjustment of lease terms was forthcoming for the third 20-year period of lease D-044569 and that such terms would commence August 30, 1974. BLM confirmed this information by letter of April 8, 1974, adding that ARCO would be required to sign new lease forms embodying the adjusted terms upon BLM's receipt of GS recommendations and its (BLM's) preparation of an environmental assessment. Almost 5 years then elapsed before BLM, by letter of March 27, 1979, informed appellant of the readjusted lease terms.

ARCO filed timely objections to the readjusted lease terms on April 27, 1979, contending, inter alia, that BLM's readjustment had been tardy and that the lease improperly contained terms "supposedly mandated" by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 201 (1982). Negotiations were proposed by ARCO, and not until April 17, 1985, did BLM issue its decision addressing ARCO's objections.

In this decision, BLM overruled appellant's objection that readjustment was tardy, citing Coastal States Energy Co., 70 IBLA 386, 389 (1983), and Gulf Oil Corp., 73 IBLA 328, 331 (1983). 3/ It did, however, sustain appellant's contention that lease terms attributable to FCLAA were improperly added to the instant lease. 4/ This action caused BLM to vacate in part is notice of March 27, 1979, insofar as that notice incorporated FCLAA terms in lease D-044569. BLM further held that lease D-044569 would next become subject to readjustment on August 30, 1994. 5/

On appeal to this Board, ARCO states:

> The scope of this appeal is narrow. ARCO contends only (i) that readjustment of the ARCO Lease was untimely and (ii) that certain technical lease terms and conditions imposed by the BLM, those pertaining to future lease readjustments and the

---

2/ Section 2(i) of the original lease required the lessee to pay a royalty on not less than 275 tons of coal per year beginning with the fourth year of the lease.
3/ In Coastal States Energy Co., supra, the lessee received readjusted lease terms some 17 days after the anniversary date of the lease. Notice of readjustment had been made prior to the anniversary date. In Gulf Oil Corp., supra, both the notice and the actual readjusted lease terms were received by the lessee prior to the end of the first 20-year lease period.
4/ This holding caused BLM to alter lease provisions affecting diligence, rental, production royalty, advance royalty, and logical mining units.
5/ On page 9 of the decision on appeal, BLM notes that as of May 1, 1983, when ARCO sought a modification of lease D-044569 to add certain acreage, its objections to FCLAA-based terms became moot. Spring Creek Coal Co., 83 IBLA 159 (1984).

area encompassed by the leased lands, are unreasonable. No other issue is before this Board.

In support of its first argument, ARCO focuses upon section 7 of the Mineral Lands Leasing Act, 30 U.S.C. § 207 (1970), as it read at the conclusion of the lease's second 20-year period. That section provides in pertinent part:

> Leases shall be for indeterminate periods upon condition of diligent development and continued operation of the mine or mines, * * * and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods.

ARCO maintains that this statute and section 3 of the lease, quoted supra, establish the time period within which a coal lease may be readjusted if the Department exercises its option to readjust, and states:

> The parameters of this option right are determined by reference to "typical contract law doctrines applicable to commercial transactions." Rosebud Coal Sales, Inc. v. Andrus, 667 F.2d [949 (10th Cir. 1982)] at 951. Those "typical contract law doctrines" are to be construed in a manner consistent with the "commercial relationship" in which the parties stand and in a "typical business context."

Id. (ARCO Statement of Reasons at 14).

> ARCO contends that "typical contract law doctrines" require that parties to an option involving mining property be vigilant and active in asserting their rights. Citing United States v. Stott, 140 F.2d 941 (8th Cir. 1944), appellant argues that when the time within which an option must be consummated is not specifically stated in a contract, the option must be fully executed within a reasonable period.

As an indication of what the Department believes to be a reasonable period, appellant offers regulation 43 CFR 3451.1(c)(2). That regulation deals with leases that became subject to readjustment after June 1, 1980, and requires BLM to include in any notice of readjustment a statement setting forth when the readjusted lease terms would be transmitted to the lessee. This time shall be as soon as possible after notice of readjustment, but shall not be longer than 2 years after such notice. Id. Failure to transmit the readjusted lease terms within this period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department. Id.

[1] Rosebud Coal Sales, Inc. v. Andrus, supra, held that BLM's attempt to readjust a coal lease by giving notice of a proposed readjustment some 2-1/2 years after the end of the lease's second 20-year period was outside of

the statutory authority of the Department and contrary to the terms of the lease. 667 F.2d at 953. Rosebud is clearly distinguishable from the present facts where the lessee (ARCO) received notice of a proposed readjustment prior to the end of the relevant 20-year period. This distinction has been key to a number of decisions affirming BLM's readjustment of coal leases. See, e.g., Gulf Oil Corp. v. Clark, 631 F. Supp. 29, 31 (D.N.M. 1985), and Gulf Oil Corp., 91 IBLA 93 (1986), and cases cited therein.

In the instant case, BLM withheld notice of the actual lease terms for almost 5 years after it gave ARCO timely notice that a readjustment would occur. During this 5-year period, an environmental assessment was performed by BLM, and GS prepared recommendations as to rent, royalty, and bond. On August 4, 1976, congress enacted FCLAA. In addition, the Department of Justice determined, pursuant to section 15 of FCLAA, 30 U.S.C. § 184 (1982), that readjustment of lease D-044569 would not "create or maintain a situation inconsistent with the antitrust laws." 6/ This 5-year period, ARCO contends, constitutes unreasonable delay.

Recently, the United States Court of Appeals for the Tenth Circuit issued its decisions in FMC Wyoming Corp. v. Hodel, 816 F.2d 496 (10th Cir. 1987) and Coastal States Energy Co. v. Hodel, 816 F.2d 502 (10th Cir. 1987). In the latter case, the court summarized its findings in the former case: "In the companion case of FMC Wyoming Corp. v. Hodel, 816 F.2d 496 (10th Cir. 1987), we found that notice of intent to readjust the terms and conditions of a coal lease sent on or before the anniversary date preserves the Department's right to readjust the terms within a reasonable time thereafter." [Emphasis added.] Because FMC appeared to set a new standard by which to evaluate BLM's action in this case, the parties were granted a period to file briefs regarding whether BLM's delay in setting forth the readjusted terms was reasonable.

Counsel for BLM stated that the period of delay was eminently reasonable because this period was "a time of complete confusion in which all three branches of the Government were trying to reshape the Federal coal program." Counsel further explains that the energy crisis contributed to "the uncertainty of the times" and to BLM's delay in furnishing ARCO with the readjusted lease terms.

ARCO replies by pointing out that a similar explanation had been proffered in Rosebud, supra, and rejected. The Court stated in Rosebud:

> The Government argues on this point that it did not take action in this instance to give notice or to readjust because it was otherwise occupied with matters of basic policy on coal leasing. The record demonstrates that the Department was busy; however, this cannot be advanced as a valid reason for not acting at

6/ Letter of Jan. 19, 1979, from the Assistant Attorney General, Antitrust Division, to BLM.

> the end of the term. There was a moratorium on new leases, but the record clearly shows that the moratorium and the policy reviews pertained only to new leases and could only pertain to new leases. During the moratorium period (1970-1976) the Department adjusted the provisions of more than ten coal leases. [Emphasis added.]

667 F.2d at 952.

In no case disclosed by our research did BLM ever consume as long a period of time as here in submitting proposed lease terms to a coal lessee. Moreover, although it is clear that regulation 43 CFR 3451.1(c)(2) is not directly applicable to the instant facts, the period set forth therein, i.e., 2 years commencing with notice of readjustment, is evidence of the Department's view on the subject of timeliness. These facts and the above-quoted language of the Rosebud Court cause us to conclude that BLM did not act within a reasonable period in setting forth the readjusted lease terms to ARCO. Accordingly, BLM may not require that ARCO comply with the readjusted terms submitted to ARCO in March 1979.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is reversed.

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge